Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010	))))))))	MB Docket No. 12-107
Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010	))))	MB Docket No. 11-43

REPLY COMMENTS OF THE
INFORMATION TECHNOLOGY INDUSTRY COUNCIL

The Information Technology Industry Council ("ITI") hereby responds to the above-captioned Further Notice of Proposed Rulemaking ("FNPRM").[1]

I. INTRODUCTION AND SUMMARY

ITI's members are among the leading companies in the information and communications technology industry. Our members are also among the key innovators of hardware and software products which Congress sought to make accessible to people with disabilities by enacting the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA").[2] As noted previously, ITI and its members strongly support the objectives of this important statute.

We have reviewed comments offered by other stakeholders in response to the FNPRM and felt it advisable to reiterate some of the arguments. We wish to state upfront, however, that

[1] "*In the Matter of Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 12-107; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43." *Report* and Order and Further Notice of Proposed Rulemaking, 78 FR 31800, May 24, 2013.

[2] Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

we – as well as other commenters – agree that Congress, in passing the CVAA, only authorized the Federal Communications Commission ("Commission") to apply video description and emergency information rules ("VD/EI") to traditional linear, but not Internet Protocol ("IP")-delivered, video programming. Moreover, Congress did not authorize the Commission to apply these VD/EI rules to devices such as tablets, laptops, personal computers, smartphones, gaming consoles, or other similar apparatus that render IP-delivered video programming. Our specific comments follow.

I. THE EXISTING VIDEO DESCRIPTION AND EMERGENCY INFORMATION RULES APPLY ONLY TO TRADITIONAL MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR'S VIDEO PROGRAMMING; THE COMMISSION SHOULD NOT EXTEND THESE RULES FURTHER.

As other commenters agreed, the CVAA, Congress only gave the Commission authority to apply the VD/EI rules to traditional linear Multichannel Video Programming Distributor's ("MVPD") video programming.[3] The Commission made it clear in its VD/EI Order that only those devices that receive broadcast and traditional linear MVPD video programming are captured by the Order. Had Congress sought to impose video description requirements on IP-delivered video programming, it would have said so in the CVAA statute, as it did with closed captioning.[4] However, it did not.

The open issues in the VD/EI FNPRM relate to linear IP-delivered video programming distributed in the home and devices that receive or playback such content. However, as noted above, the VD/EI Order applies solely to devices designed to directly receive broadcast or traditional linear MVPD video programming, such as a set-top box or cable card or devices with

[3] AT&T Comments at 4; DIRECTV, LLC Comments at 4-5; TIA Comments at 4-5; and CEA Comments at 7-8.

[4] CEA Comments at 8; DIRECTV Comments at 4 (quoting 47 U.S.C. §613(c)(2)(A): [the] "CVAA specifically directed the Commission to 'require the provision of *closed captioning* on video programming delivered using Internet protocol.'") (emphasis added by DIRECTV).

such technologies. As such, gaming consoles, personal computers, smartphones and other similar devices – that do not directly receive and decode linear video programming – are not subject to the CVAA's VD or EI rules.

II. THE COMMISSION LACKS AUTHORITY TO APPLY VD/EI REGULATIONS ON DEVICES WHEN THEY RECEIVE OR PLAYBACK INTERNET-DELIVERED VIDEO PROGRAMMING CONTENT PROVIDED BY OVER-THE-TOP PROVIDERS

As recognized by the Commission and other commenters, we also agree that Congress did not authorize the Commission to apply EI or VD to Internet-delivered programming offered by over-the-top ("OTT") providers.[5] Rather, Congress directed the Commission to study the technical and operational issues, as well as the costs and benefits of applying VD to IP-delivered

[5] *See supra* note 3; *see also* VD/EI Order at para. 8:

> ...We agree that at the present time, the delivery of **emergency information** via IP raises issues – both in terms of **scope** and in terms of practicality – that currently make it difficult to achieve. Accordingly, at this time, **we find that the emergency information rules do not apply to IP-delivered video programming, such as the programming provided by online video distributors ("OVDs") like Netflix and Hulu.** [Emphasis added.]

See also VD/EI NPRM at para. 6:

> At the outset, we do not, at this time, extend the scope of the emergency information and video description rules in this proceeding beyond the category of programming already covered by our existing emergency information and video description rules.[40] In other words, for purposes of this proceeding, the emergency information and video description rules will continue to apply to television broadcast services and MVPD services, but not to IP-delivered video programming that is not otherwise an MVPD service. ***Notably, Congress did not explicitly extend the scope of the emergency information rules to IP-delivered video programming, as it did in requiring closed captioning of IP-delivered video programming.[41] Instead, Congress referenced television-based definitions of video programming distributors and providers.[42] In addition, as a practical matter, we note that the VPAAC found that "at this time . . . there does not appear to be any uniform or consistent methodology for delivering emergency information via the Internet."***[43] Similarly, we note that the CVAA directs that the Commission's video description regulations "shall apply to video programming . . . insofar as such programming is transmitted for display on television in digital format."[44] ***Accordingly, the video description rules require video description only by television broadcast stations and MVPDs.[45]*** [Emphasis added.]
>
> VD/EI NPRM Footnotes:
>
> [40] 47 C.F.R. §§ 79.2(a)-(b), 79.3(a)-(c). We note that Congress directed the Commission to conduct inquiries on further video description requirements in the future. 47 U.S.C. § 613(f)(3).
>
> [42] 47 U.S.C. § 613(g)(2) (referencing the definitions of video programming providers and video programming distributors from the television closed captioning rule, 47 C.F.R. § 79.1); 47 C.F.R. § 79.1(a)(2)-(3) (defining a television video programming provider and distributor).
>
> [43] VPAAC Second Report: Access to Emergency Information at 9.
>
> [44] 47 U.S.C. § 613(f)(2)(A).
>
> [45] *2011 Video Description Order*, 26 FCC Rcd at 11848, ¶ 2; 47 C.F.R. § 79.3(b).

programming, and then to report back to Congress.[6] As noted by AT&T, the Commission cannot issue rules sooner than two years after it publishes this report to Congress.[7]

Furthermore, technical limitations would make it challenging to apply VD and EI to IP-delivered video programming offered by OTT providers. As the VPAAC noted, no technical standard exists for providing VD for IP-delivered video programming.[8] The Commission also acknowledged that applying EI to Internet-delivered video programming does not make sense given the local geographic nature of EI.[9] As other commenters agree, the Commission similarly lacks authority to impose VD and EI requirements on devices that receive or playback IP-delivered programming that occurs outside the home.[10] This is because such programming is offered over an Internet connection and is therefore excluded by the CVAA.

III. DEVICE MANUFACTURERS SHOULD NOT BE REQUIRED TO IMPLEMENT VD/EI ON PCs, TABLETS, GAMING CONSOLES, SMARTPHONES, OR ON SIMILAR DEVICES

In addition to the Commission's absence of legal authority to impose VD/EI regulations on devices – such as PCs, tablets, gaming consoles and smartphones – that receive IP-delivered

---

[6] *See* also 47 USC 613(f)(3)(B), which states:

> ''(3) INQUIRIES ON FURTHER VIDEO DESCRIPTION REQUIREMENTS.— The Commission shall commence the following inquiries not later than 1 year after the completion of the phase-in of the reinstated regulations and shall report to Congress 1 year thereafter on the findings for each of the following
>
> … ''(B) VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON THE INTERNET.—The technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol."

[7] *See* AT&T Comments at 4-5 citing to 47 U.S.C. § 613(f)(4)("The Commission may not issue additional regulations unless the Commission determines, *at least 2 years after* completing the reports…").

[8] Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010 Access to Emergency Information, April 9, 2012, at 12.

[9] *See* VD/EI Order, footnote 28:

> We also note that Section 79.2(b)(2) applies the rule "to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring." 47 C.F.R. § 79.2(b)(2***). Given this geographic limitation, applying the rule broadly to cover all IP-delivered video programming, regardless of location, may not serve a useful purpose for and may cause confusion to viewers in areas with no connection to the location of the emergency.*** [Emphasis added.]

[10] *See supra* note 5; *see* AT&T Comments at 3-4; CEA Comments at 2-3.

video programming, to the extent these devices receive such programming in the home, they do so through an MVPD's software application. Device manufacturers do not control the linear IP MVPD's video programming software application, and therefore cannot make changes to it. Furthermore, device manufacturers typically do not control access to the content, decide which content is available, secure the content (via encryption or other mechanisms), or contract with content owners to add the VD to the video programming. The above is also true for EI, except broadcasters would add the EI content to their programming delivered over a MVPD's network.

Further, device manufacturers should not be required to alter products to accommodate MVPD or other third party software (such as OTT apps).[11] It is the MVPD's or third party's video software applications through which users watch MVPD programming on alternative devices.[12] Accordingly, MVPDs and third parties should bear responsibility for ensuring that consumers can access the VD/EI content through their apps/plug-ins, because:

- MVPDs and third party software makers create and control the intellectual property rights for the apps/plug-ins that are used to view such content and distribute these apps/plug-ins to their subscribers;
- MVPD content is typically protected/encrypted and only the MVPDs or third party content providers are able to decrypt the content for rendering. Apparatus pass through what the MVPD provides; and
- The Commission has no authority to regulate software under Section 203 CVAA – e.g., operating systems, media players, etc.

[11] While the Commission, in the Advanced Communications Services Order ("ACS Order"), held device manufacturers responsible for pre-installed software on their devices, that distinction is based on the unique language in CVAA Section 716(a)(1) that describes responsibilities of manufacturers for the "equipment" and "software" they offer for sale. *See* ACS Order at para. 66. However, for VD/EI device makers, Section 203 does not contain similar language holding apparatus manufacturers responsible for the software on their devices. Rather, Section 203 says merely that apparatus have the capabilities, if technically feasible, to decode and make available emergency information and video description. 47 U.S.C. § 303(u)(1). In this case, the parties best suited to provide these capabilities are the MVPDs and third party app providers.

[12] For example, *see* http://newscenter.verizon.com/residential/news-articles/2013/06-fios-mobile-app-android-launch/ and http://xfinity.comcast.net/learn/mobile-apps/.

IV. IT IS UNNECESSARY AND LIKELY CONFUSING FOR CUSTOMERS TO REQUIRE SEPARATE CUSTOMER SUPPORT FOR VD AND EI

The Commission should not mandate separate customer support for blind/visually disabled users relative to VD/EI. Such separate customer support would be duplicative of companies' already existing support services, likely to confuse customers, and not authorized under Section 203. In any case, device manufacturers should not be covered by this rule, since they are not responsible for distribution of video programming over personal computers, tablets, smartphones and other similar devices.

V. CONCLUSION

ITI requests that the Commission proceed with implementing the CVAA in the manner described herein.

Respectfully submitted,

/s/Ken J. Salaets
Ken J. Salaets
Director, Global Policy

/s/Vince Jesaitis
Vince Jesaitis
Director, Government Relations

Information Technology Industry Council
1101 K Street, N.W.
Suite 610
Washington, D.C. 20005
202-737-8888

August 22, 2013